



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2015-0828; FRL 9944-76-OW]

Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: All 10 EPA Regions are proposing for public comment on the draft 2017 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities, also referred to as the “2017 Construction General Permit (CGP)” or the “draft permit.” The draft permit, once finalized, will replace the existing general permit covering stormwater discharges from construction activities that will expire on February 16, 2017. EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. EPA seeks comment on the draft permit and on the accompanying fact sheet, which contains supporting documentation. This Federal Register document describes the draft permit in general and also includes specific topics on which the Agency is particularly seeking comment. EPA

encourages the public to read the fact sheet to better understand the draft permit. The fact sheet and draft permit can be found at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

DATES: Comments on the draft permit must be received on or before **[insert date 45 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2015-0828** to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For further information on the draft permit, contact the appropriate EPA Regional office listed in Section I.F of this action, or Emily Halter, EPA Headquarters, Office of Water, Office of Wastewater Management; telephone number:

202-564-3324; email address: *halter.emily@epa.gov*.

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I. General Information

A. *Does this Action Apply to Me?*

1. *Entities Covered by this Permit*

This draft permit covers the following entities, as categorized in the North American Industry Classification System (NAICS):

Table 1--Entities Covered by this Draft Permit

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your site is covered by this action, you should carefully examine the definition of “construction activity” and “small construction activity” in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed

for technical information in the preceding FOR FURTHER INFORMATION CONTACT section.

2. Construction Projects for which Operators are Eligible for Permit Coverage

Coverage under this permit is available to operators of eligible projects located in those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the draft permit. Eligibility for permit coverage is limited to operators of “new sites,” operators of “existing sites,” “new operators of new or existing sites,” and operators of “emergency-related projects.” A “new site” is a site where construction activities commenced on or after February 16, 2017. An “existing site” is a site where construction activities commenced prior to February 16, 2017. A “new operator of a new or existing site” is an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site. An “emergency-related project” is a project initiated in response to a public emergency (e.g., mud slides, earthquake, extreme flooding conditions, disruption in essential public services), for which the related work requires immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish public services.

3. Geographic Coverage

This draft permit will provide coverage to eligible operators for stormwater discharges from construction activities that occur in areas not covered by an approved state NPDES program. The areas of geographic coverage of this draft permit are listed in Appendix B, and include the states of New Hampshire, Massachusetts, New Mexico, and Idaho as well as all

Indian country lands,¹ and areas in selected states operated by a federal operator. Permit coverage is also provided to operators in Puerto Rico, the District of Columbia, and the Pacific Island territories, among others.

B. How Can I Get Copies of these Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. **EPA-HQ-OW-2015-0828**. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/ DC) WJC West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this Federal Register notice electronically through the United States government on-line source for Federal regulations at <http://www.regulations.gov>.

Electronic versions of this draft permit and fact sheet are available on EPA's NPDES web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

¹ In January 2016, the Interior Board of Indian Appeals upheld the decision by the Bureau of Indian Affairs to provide federal recognition to the Pamunkey Tribe of Virginia (see *In Re Federal Acknowledgement of the Pamunkey Indian Tribe*, 62 IBIA 122 (1/28/16)). Following this action, it is likely state reservation land will be placed into trust. Once this process is completed, the reservation would be Indian country. EPA would then consult with the Tribe as to whether the Tribe would like permit coverage for operators on its reservation, and if so, EPA could then issue the permit for the Pamunkey Reservation without further notice and comment.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. As noted previously, CBI information should not be submitted through <http://www.regulations.gov> or by e-mail. When EPA identifies a

comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

2. Tips for Preparing Your Comments.

When submitting comments, remember to:

- Identify this draft permit by docket number and other identifying information (subject heading, Federal Register date and page number).
- Where possible, respond to specific questions or organize comments by referencing a section or part of this draft permit.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- To ensure that EPA can read, understand, and therefore properly respond to comments, the

Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the draft permit or fact sheet to which each comment refers.

- Make sure to submit your comments by the comment period deadline identified.

D. Will Public Hearings be Held on this Action?

EPA has not scheduled any public hearings to receive public comment concerning the draft permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the draft permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided previously for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft permit at the public hearing.

E. What Process will EPA Follow to Finalize the Permit?

After the close of the public comment period, EPA intends to issue a final permit on or prior to the expiration date of the current 2012 CGP. This permit will not be issued until all significant comments have been considered and appropriate changes made to the draft permit. EPA's responses to public comments received will be included in the docket as part of the final permit issuance. Once the final permit becomes effective, eligible operators of existing and new

sites may seek authorization under the new CGP. Any construction site operator obtaining permit coverage prior to the expiration date of the 2012 CGP will automatically remain covered under that permit until the earliest of:

- Authorization for coverage under the 2017 CGP following a timely submittal of a complete and accurate Notice of Intent (NOI);
- Submittal of a Notice of Termination (NOT); or
- EPA issues an individual permit or denies coverage under an individual permit for the site's stormwater discharges.

F. Who are the EPA Regional Contacts for this Permit?

For EPA Region 1, contact Suzanne Warner at telephone number: (617) 918-1383 or e-mail at *warner.suzanne@epa.gov*.

For EPA Region 2, contact Stephen Venezia at telephone number: (212) 637-3856 or e-mail at *venezia.stephen@epa.gov*, or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977-5838 or e-mail at *bosques.sergio@epa.gov*.

For EPA Region 3, contact Carissa Moncavage at telephone number: (215) 814-5798 or e-mail at *moncavage.carissa@epa.gov*

For EPA Region 4, contact Michael Mitchell at telephone number: (404) 562-9303 or e-mail at *mitchell.michael@epa.gov*.

For EPA Region 5, contact Brian Bell at telephone number: (312) 886-0981 or e-mail at *bell.brianc@epa.gov*.

For EPA Region 6, contact Suzanna Perea at telephone number: (214) 665-7217 or e-mail at: *perea.suzanna@epa.gov*.

For EPA Region 7, contact Mark Matthews at telephone number: (913) 551–7635 or e-mail at: *matthews.mark@epa.gov*.

For EPA Region 8, contact Amy Clark at telephone number: (303) 312-7014 or e-mail at: *clark.amy@epa.gov*.

For EPA Region 9, contact Eugene Bromley at telephone number: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov*.

For EPA Region 10, contact Margaret McCauley at telephone number: (206) 553–1772 or e-mail at *mccauley.margaret@epa.gov*.

II. Background of Permit

The Clean Water Act (“CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a). The CWA also includes the objective of attaining “water quality which provides for the protection and propagation of fish, shellfish and wildlife and * * * recreation in and on the water.” 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

The Water Quality Act of 1987 (WQA) added section 402(p) to the CWA, which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the Federal Register, often called the “Phase I Rule,” on November 16, 1990, establishing permit application requirements for, among other things, “storm water discharges associated with industrial activity.” See 55 FR 47990. EPA defines the term “storm water discharge associated with industrial activity” in a

comprehensive manner to cover a wide variety of facilities. See *id.* Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of “industrial activity” pursuant to 40 CFR 122.26(b)(14)(x). The second rule implementing section 402(p), often called the “Phase II Rule,” was published in the Federal Register on December 8, 1999. It requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is proposing to issue this draft permit under the statutory and regulatory authority cited above.

NPDES permits for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under Section 301 and, where applicable, Section 306. Effluent limitations guidelines (ELGs) and New Source Performance Standards (NSPS) are technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA.

Once a new national standard is established in accordance with these sections, NPDES permits must incorporate limits based on such technology-based standards. See CWA sections 301 and 306, 33 U.S.C. 1311 and 1316, and 40 CFR 122.44(a)(1). On December 1, 2009, EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category, which became effective on February 1, 2010. See 40 CFR part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or “C&D

rule,” was amended on March 6, 2014 to satisfy EPA’s agreements pursuant to a settlement of litigation that challenged the 2009 rule. See 79 FR 12661. All NPDES construction permits issued by EPA or states after this date must incorporate the requirements in the C&D rule.

III. Summary of the Draft Permit

The draft permit is similar to the existing 2012 CGP. It includes effluent limitations (i.e., requirements for erosion and sediment and pollutant prevention controls) and requirements for self-inspections, corrective actions, staff training, development of a stormwater pollution prevention plan (SWPPP), and permit conditions applicable to construction sites in specific states, Indian country lands, and territories. Additionally, the appendices provide forms for the submittal of an NOI, NOT, Low Erosivity Waiver (LEW), as well as step-by-step procedures for determining eligibility with respect to the protection of threatened and endangered species and historic properties, and for complying with the draft permit’s natural buffer requirements.

A. Technology-Based Effluent Limits

As stated previously, all NPDES construction permits issued by EPA or states after March 6, 2014 must incorporate the requirements in the C&D rule, as amended. The non-numeric effluent limitations in the C&D rule are designed to prevent the mobilization and discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants. Soil on construction sites can contain a variety of pollutants such as nutrients, pesticides, herbicides, and metals. These pollutants may be present naturally in

the soil, such as arsenic or selenium, or they may have been contributed by previous activities on the site, such as agriculture or industrial activities. These pollutants, once mobilized by stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The non-numeric effluent limits in the C&D rule, upon which certain technology-based requirements in the draft permit are based, include the following:

- *Erosion and Sediment Controls*—Permittees are required to design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:
 1. Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;
 2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
 3. Minimize the amount of soil exposed during construction activity;
 4. Minimize the disturbance of steep slopes;
 5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater

discharge, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible;

7. Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted; and

8. Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

- *Soil Stabilization Requirements*—Permittees are required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed.

- *Dewatering Requirements*—Permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless

managed by appropriate controls.

- *Pollution Prevention Measures*—Permittees are required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants.

At a minimum, such measures must be designed, installed, implemented and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater.

Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use); and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

- *Prohibited Discharges*—The following discharges from C&D sites are prohibited:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

- *Surface Outlets*—When discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

The fact sheet details how EPA has incorporated these requirements into the draft permit.

The discussion in the fact sheet includes a summary of each provision and the Agency's rationale for articulating the provision in this way.

B. Water Quality-Based Effluent Limits (WQBELs)

EPA's regulations at 40 CFR 122.44(d)(1) require permitting authorities to include additional or more stringent permit requirements when necessary to achieve water quality standards. The 2012 CGP contained several provisions to protect water quality and the draft permit includes those same provisions. It includes a narrative WQBEL requiring that discharges be controlled as necessary to meet applicable water quality standards. Failure to control discharges in a manner that meets applicable water quality standards will be a violation of the permit.

In addition to the narrative WQBEL, the draft permit contains related provisions that act together to further protect water quality. These provisions were also included in the 2012 CGP. For example, the draft permit requires permittees to implement stormwater control measures and to take corrective action in response to any exceedance of applicable water quality standards. To provide further protection, the draft permit requires more stringent site inspection frequencies and stabilization deadlines for construction sites that discharge to sensitive waters, such as those waters that are sediment or nutrient-impaired, which are parameters typically associated with stormwater discharges from construction sites, or waters identified by a state, tribe, or EPA as

requiring enhanced protection under antidegradation requirements. Additionally, EPA expects that, as with the 2012 CGP, the Agency will receive CWA Section 401 certifications for the final 2017 CGP. Some of those certifications may include additional conditions that are required by states, Indian country lands, and territories, that become legally binding permit limits and conditions in specific geographic areas where the permit is available.

C. Summary of Proposed Permit Changes

EPA proposes to make several modifications to the 2012 CGP, which are summarized below and discussed in more detail in the fact sheet. EPA also specifically requests comment on several potential permit modifications, which are summarized in Section III.D below. The fact sheet for the draft permit explains in more detail each proposed permit condition and the rationale for including those conditions and any changes to those conditions. The fact sheet and draft permit can be found at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>. The following list summarizes these specific permit modifications, and where they are included in the draft permit.

1. *Streamlining of permit*—EPA proposes to streamline and simplify language throughout the draft permit to present requirements in a generally more clear and readable manner. This structure should enhance the permittees’ understanding of and compliance with the permit’s requirements. For example, EPA moved language that was not necessary in the permit to the relevant appendix or to the fact sheet. Although the draft permit has been streamlined from prior permits, many of the requirements remain unchanged.

2. *Revisions consistent with the C&D ELG, as amended* — EPA proposes to make minor revisions to the technology-based effluent limits in the permit to implement the March 6, 2014

amendments to the Construction and Development Effluent Guidelines and Standards (the “C&D rule”) at 40 CFR Part 450 (see section III.A. of this notice on Technology-Based Effluent Limits). The 2012 CGP already incorporated the original C&D rule requirements and the draft permit makes the necessary revisions to the language based on the rule amendments, but does not add any new requirements. These revisions include clarifying the applicability of requirements to control erosion caused by discharges, providing additional details on areas where buffers are required, and clarifying requirements for soil stabilization, preservation of topsoil, and pollution prevention measures.

3. *Authorized non-stormwater discharges* – EPA currently authorizes several non-stormwater discharges associated with construction activity under the 2012 CGP. EPA proposes in the draft permit to require that authorized non-stormwater discharges of external building washdown waters must not contain hazardous substances, such as paint or caulk containing polychlorinated biphenyls (PCBs). Part 1.2.2.

4. *Public notice of permit coverage*—The current 2012 CGP requires that permittees post a sign or other public notice of permit coverage at a safe, publicly accessible location in close proximity to the construction site. EPA proposes in the draft permit that this notice must also include information informing the public on how to contact EPA if stormwater pollution is observed in the discharge. EPA is proposing to require this condition to improve compliance with the permit. Part 1.5.

5. *Stockpiles and land clearing debris piles* – The current 2012 CGP requires that cover or appropriate temporary stabilization be provided for any stockpiles “where practicable.” EPA proposes in the draft permit to require cover or appropriate temporary stabilization for all inactive stockpiles and land clearing debris piles for those piles that will be unused for 14 or

more days. This provision is consistent with the permit's stabilization requirements in Part 2.2.14 of the draft permit. EPA is proposing this change to ensure pollutants are minimized from these piles, but is clarifying that the requirement only applies where these piles are not actively being used. Part 2.2.5.

6. *Construction and domestic waste* – EPA proposes in the draft permit to require waste container lids to be kept closed when not in use, or, for waste containers that do not have lids and could leak, EPA proposes to require cover or a similarly effective means to be provided to minimize the discharge of pollutants. EPA proposes this change to make the requirements for construction and domestic waste consistent with the cover requirements for most other types of materials and wastes in the 2012 CGP. Part 2.3.3.

7. *Pollution prevention requirements for demolition activities*—EPA proposes in the draft permit a requirement to implement controls to minimize the exposure of polychlorinated biphenyl- (PCB) containing building materials to precipitation and stormwater associated with the demolition of structures with at least 10,000 square feet of floor space built or renovated before January 1, 1980. In addition, EPA proposes to require information about the demolition location and associated pollutants to be documented in the SWPPP. Part 2.3.3.

8. *Reporting information on construction activities*—EPA proposes to require a question on the NOI form asking for the type of construction activities that will occur on the site. See draft Appendix J.

D. Provisions for Which EPA is Soliciting Comment

While EPA encourages the public to review and comment on all provisions in the draft permit, EPA has included in the body of the draft permit several provisions on which EPA

specifically requests feedback. The following list summarizes these specific requests for comment, and where they are included in the permit:

1. *Group SWPPP for multiple operators*—Request for comment on whether the permit should include a provision for sites with multiple operators requiring those operators to develop a group SWPPP. Part 1.1.1.
2. *Authorized non-stormwater discharges*—Request for comment on whether to require that authorized non-stormwater discharges of external building washdown waters must not contain hazardous substances. Part 1.2.2.
3. *Stabilization deadlines*—Request for comment on modifying the deadline to complete stabilization to seven (7) calendar days for all sites. Part 2.2.14.
4. *Controls for dewatering discharges*—Request for comment on additional controls or requirements EPA should consider to ensure that discharges of pollutants in construction dewatering discharges are minimized. Part 2.4.
5. *Site inspection frequency*—Request for comment on modifying the minimum site inspection frequency. Part 4.2.2.
6. *Snowmelt discharge inspection frequency*—Request for comment on the frequency of inspections that should be required for discharge events with snowmelt runoff. Part 4.2.2.
7. *Availability of Stormwater Pollution Prevention Plan (SWPPP)*—Request for comment on requiring operators to make the SWPPP, or a portion of the SWPPP, publicly available. Part 7.3.

IV. Analysis of Economic Impacts

EPA expects the economic impact on entities that will be covered under this permit,

including small businesses, to be minimal. A copy of EPA's economic analysis, titled "Cost Impact Analysis for the 2017 Proposed Construction General Permit (CGP)," is available in the docket for this draft permit. The economic impact analysis indicates that while there may be some incremental increase in the costs of complying with the new permit, these costs will not have a significant economic impact on a substantial number of small entities.

V. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The draft permit is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

VI. Compliance with the National Environmental Policy Act (NEPA) for the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Construction Activities

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4307h), the Council on Environmental Quality's NEPA regulations (40 CFR part 15), and EPA's regulations for implementing NEPA (40 CFR part 6), EPA has determined that the 2017 reissuance of the CGP is eligible for a categorical exclusion requiring documentation under 40 CFR 6.204(a)(1)(iv). This category includes "actions involving reissuance of a NPDES permit for a new source providing the conclusions of the original NEPA document are still valid, there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective." EPA completed an Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the existing 2012 CGP. The analysis and conclusions

regarding the potential environmental impacts, reasonable alternatives, and potential mitigation included in the EA/FONSI are still valid for the 2017 reissuance of the CGP because the proposed permit conditions are either the same or in some cases are more environmentally protective. Actions may be categorically excluded if the action fits within a category of action that is eligible for exclusion and the proposed action does not involve any extraordinary circumstances. EPA has reviewed the proposed action and determined that the 2017 reissuance of the CGP does not involve any extraordinary circumstances listed in 6.204(b)(1) through (b)(10). Prior to the issuance of the final 2017 CGP, the EPA Responsible Official will document the application of the categorical exclusion and will make it available to the public on EPA's website at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/nepa/search>. If new information or changes in the draft permit involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the permit may not meet the criteria for categorical exclusion, EPA will prepare an EA or Environmental Impact Statement (EIS).

VII. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this draft permit will not have disproportionately high and

adverse human health or environmental effects on minority or low-income populations because the requirements in the draft permit apply equally to all construction projects that disturb one or more acres in areas where EPA is the permitting authority, and the erosion and sediment control proposed provisions increase the level of environmental protection for all affected populations.

VIII. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In compliance with Executive Order 13175, EPA has consulted with tribal officials to gain an understanding of and, where necessary, to address the tribal implications of the draft permit. In the course of this consultation, EPA conducted the following activities:

- August 5, 2015–EPA mailed notification letters to all Tribal leaders, initiating consultation and coordination on the draft permit. The consultation period was from August 17, 2015 to October 13, 2015.
- August 11, 2015–EPA presented a brief overview of the current CGP and information regarding the upcoming consultation to the National Tribal Caucus.
- August 12, 2015–EPA presented a brief overview of the current CGP and information regarding the upcoming consultation to the National Tribal Water Council.
- September 22, 2015–EPA held a consultation teleconference call; 18 Tribes were represented. EPA responded to the general questions raised on the call.
- On October 14, 2015, EPA received one set of comments from a Tribe in the State of Washington. EPA has started evaluation of the comments and will consider them moving forward; EPA will respond to the formal comments submitted in writing during the comment period in the Agency’s final action.

- EPA will provide email notification to Tribes of today's proposal of the draft permit, and invite those interested to provide the Agency with comments.

EPA also notes that as part of the finalization of this draft permit, it will complete the Section 401 certification procedures with all applicable tribes where this permit will apply (see Appendix B).

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: March 29, 2016.

H. Curtis Spalding,
Regional Administrator, EPA Region 1.

Dated: March 29, 2016.

Joan Leary Matthews
Director, Clean Water Division, EPA Region 2.

Dated: March 29, 2016.

Jose C. Font
Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: March 29, 2016.

Jon M. Capacasa,
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Dated: March 29, 2016.

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Dated: March 29, 2016.

Tinka G. Hyde

Director, Water Division, EPA Region 5.

Dated: March 29, 2016.

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Dated: March 29, 2016.

Darcy O'Connor,
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Dated: March 29, 2016.

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Assistant Director, Water Division, EPA Region 9.

Dated: March 29, 2016.

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